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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,525	12/13/2001	Parker Small	UF1561B-D2	7630

29847 7590 10/16/2003

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EXAMINER

GITOMER, RALPH J

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 10/16/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/015,525

Applicant(s)

Small et al.

Examiner

Ralph Gitomer

Art Unit

1651



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 13, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-28 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other:

The preliminary amendment received 12/13/2001 and the IDS received 3/19/2003 have been entered and claims 21-28 are currently pending in this application.

5

Please inform the examiner where in the chain of CIP applications enablement is first found in the specification for the presently claimed invention as all the applications are not currently available to the examiner. Priority is granted to 6/19/2000 at this time.

10

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

15

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

20

Claims 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin.

25

Lin (5,843,768) entitled ~~✕~~Ventilated Waste Collecting Container~~✕~~ teaches in the abstract and Figures, a container for collecting and storing material that is sealable and has multiple sealable ventilation holes, see Fig. 3 particularly.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

5 (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be
10 negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various
15 claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the
20 examiner to consider the applicability of 35 U.S.C. 103[®] and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

25 Claims 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin.

Lin (5,843,768) entitled ~~✕~~Ventilated Waste Collecting Container~~✕~~ teaches in the abstract and Figures, a container for collecting and storing material that is sealable and has multiple sealable ventilation holes, see Fig. 3 particularly.

The claims differ from Lin in that they recite various types of labeling and claim 24 is directed to a type of seal, claims 26-27 are directed to the appearance of the container and claim 28 is directed to joined containers.

5 It would have been obvious to one of ordinary skill in the art at the time the invention was made to label the container with any desired known labeling because most all commercially sold containers are labeled in some fashion and to select any known labeling for its known function would have been obvious.

10 The labeling of a device does not impart patentability. Zip-lock seals are well known and were commercially available at the time of the invention. The selection of Zip-lock seals in the container of Lin would be a design choice. The selection of a colored, translucent, or opaque container is a mere design

15 choice. Regarding claim 28 directed to a releasably joined plurality of collection devices, many plastic containers are manufactured and sold as releasably joined and no unexpected results are seen in doing so for the claimed container. That the present claims are directed to collecting nasal secretions, it is

20 the container itself which is claimed and rendered obvious by Lin, not the contents of the container. The device of Lin could contain nasal secretions.

Claim 24 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in all occurrences.

In claim 24, ~~Zip-lock~~ is a trademarked name and is improper in claims.

The use of the trademark Zip-lock has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

The Abstract of the Disclosure is objected to because it is not directed to the currently claimed invention. Correction is required. See M.P.E.P. § 608.01(b).

The following prior art pertinent to applicant's disclosure is made of record and not relied upon:

Tripp (6,312,395) teaches a cell collection container.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (703) 308-0732. The examiner can normally be reached on Tuesday-Friday from 8:00 am - 5:00 pm.

5 The examiner can also be reached on alternate Mondays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (703) 308-4743. The fax phone number for this Art Unit is (703) 872-9306. Any inquiry of a general nature or relating to the status

10 of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235. For 24 hour access to patent application information 7 days per week, or for filing applications electronically, please visit our website at www.uspto.gov and click on the button Patent Electronic Business

15 Center for more information.

Ralph Gitomer
Ralph Gitomer
Primary Examiner
Group 1651

**RALPH GITOMER
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